

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

SESSION LAW 1998-135

SENATE BILL 78

AN ACT AMENDING THE STATE PERSONNEL ACT TO ESTABLISH JURISDICTION FOR THE HEARING OF STATE EMPLOYEE WORKPLACE HARASSMENT GRIEVANCES BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS AND THE STATE PERSONNEL COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-4(11) reads as rewritten:

"(11) In cases where the Commission finds discrimination, harassment, or orders reinstatement or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved."

Section 2. G.S. 126-34 reads as rewritten:

"§ 126- 34. Grievance appeal for career State employees.

Unless otherwise provided in this Chapter, ~~Any~~ any career State employee having a grievance arising out of or due to ~~his~~ the employee's employment and who does not allege unlawful harassment or discrimination because of ~~his~~ the employee's age, sex, race, color, national origin, religion, creed, handicapping condition as defined by G.S. 168A-3, or political affiliation shall first discuss ~~his~~ the problem or grievance with his the employee's supervisor and follow the grievance procedure established by ~~his~~ the employee's department or agency. Any State employee having a grievance arising out of or due to the employee's employment who alleges unlawful harassment because of the employee's age, sex, race, color, national origin, religion, creed, or handicapping condition as defined by G.S. 168A-3 shall submit a written

complaint to the employee's department or agency. The department or agency shall have 60 days within which to take appropriate remedial action. If the employee is not satisfied with the department or agency's response to the complaint, the employee shall have the right to appeal directly to the State Personnel Commission."

Section 3. G.S. 126-34.1(a) is amended by adding a new subdivision to read:

"(10) Harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo."

Section 4. G.S. 126-36 reads as rewritten:

"§ 126- 36. Appeal of unlawful State employment practice.

(a) Any State employee or former State employee who has reason to believe that employment, promotion, training, or transfer was denied ~~him~~ the employee or that demotion, ~~layoff~~ layoff, transfer, or termination of employment was forced upon ~~him~~ the employee in retaliation for opposition to alleged discrimination or because of ~~his~~ the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or ~~handicapped~~ handicapping condition as defined by G.S. 168A-3 except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration, shall have the right to appeal directly to the State Personnel Commission.

(b) Subject to the requirements of G.S. 126-34, any State employee or former State employee who has reason to believe that the employee has been subjected to any of the following shall have the right to appeal directly to the State Personnel Commission:

(1) Harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo.

(2) Retaliation for opposition to harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid

pro quo."

Section 5. G.S. 126-37(a) reads as rewritten:

"(a) Appeals involving a disciplinary action, alleged ~~discrimination~~, discrimination or harassment, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36, except as provided in subsection (b1) of this section. The State Personnel Commission is hereby authorized to reinstate any employee to the position from which ~~he~~ the employee has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority."

Section 6. This act becomes effective August 15, 1998, and applies to State employee grievances arising on or after that date and to cases pending on that date in the Office of Administrative Hearings or before the State Personnel Commission or on appeal from a decision of the Commission.

In the General Assembly read three times and ratified this the 2nd day of September, 1998.

s/ Dennis A. Wicker

President of the Senate

s/ Harold J. Brubaker

Speaker of the House of Representatives

s/ James B. Hunt, Jr.

Governor

Approved 10:26 a.m. this 11th day of September, 1998